IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
MISC. PETITION NO. 24 OF 2001

SICOM Ltd .....Petitioner
vs.
Sailesh Gandhi and
Anr. .....Respondents

Prakash Punjabi and Co. for the petitioners.

CORAM: S.U. KAMDAR, J.

DATE : 2ND MAY, 2005.

P.C. :

1. The present Miscellaneous petition is filed under s.31(1) (aa) of the State Financial Corporation Act by the respondent company for the enforcement of the guarantee and for the recovery of the amount as against the guarantors. Some of the material facts of the present case are as under :

2. A company known as Vadilal Dairy International Ltd was incorporated of which the

respondents are the directors. On the request of the said company the petitioner sanctioned a term loan of Rs.82,00,000/- by sanction letter dated 18.8.1994. Inrespect of the said letter a deed of mortgage was executed on 23.12.1988 mortgaging the various assets of the company to the petitioner herein. A further loan of Rs.4.00 crores was also sanctioned by the sanction letter dated 28.2.1998 and inrespect of the same a charge has been created on the assets of the company and a deed of further charge dated 30.3.1998 is duly registered. It is the case of the petitioner that pursuant to the said sanction the amount has been disbursed to the company. A term loan of Rs.82,00,000/- which was disbursed was repayable in twenty one quarterly instalments commencing from 15.12.1995 to 15.12.2000 and further a term loan of Rs.4.00 crores was also repayable in 17 quarterly instalments commencing from 15.1.1999 to 11.3.2002. There was an agreement between the parties to pay interest on the loan amount at the rate of 16% p.a. It is the case of the petitioner that the said term

loan was not repaid on due dates and the defendants have committed defaults in payment of the various instalments as provided under the terms and conditions of the term loan agreement. The is a principal debtor has filed a reference before the BIFR under the provisions of the Sick Industrial (Special Provisions) Act, 1985. In view of the defaults made by the company in repayment of the instalment amount of loan a demand notice dated 13/5/1999 was issued to the principal debtor. However since the said company did not make repayments of the amount inspite of the notice of demand a recall notice was issued on 12.10.2000. The loan amount outstanding as on that date was an of aggregate sum of Rs.4,54,74,433/-.

3. On 23.10.2000 the company registered itself before the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the Act. In view of s.22 of the said Act the petitioner could not take any

further steps as against the principal debtor and or the assets of the said principal debtor which was mortgaged with the petitioner herein. Ultimately the respondent issued a notice on 10.11.2000 and invoked the guarantee furnished by the respondent herein and called upon the respondent to make payment of the amount which was indemnified by them under the deed of guarantee dated 23.12.1994 and 23.4.19998. w Inspite the issuance of notice the respondent did not make re-payment of the said loan amount, hence the present petition is filed under section 31(1) (aa) of the SFC Act, 1991. According to the petitioner there is an outstanding overdue amount of Rs.4,95,65,954 payable by the respondent under the said deed of guarantees.

4. The learned counsel appearing for the respondents has raised two defences before me. Firstly it is contended that the petition is not maintainable because the petitioner has not paid the court fees in accordance with Article 7 of Schedule-I of the Court Fee Act. The second

contention raised by him is that the present company is registered under the BIFR and in view of the provisions of s.22 the proceedings would not lie as against the respondent who are the guarantors.

5. It is not possible to accept both the aforesaid submissions in view of the judgment of the apex court in the case of **Maharashtra State Financial Corporation vs. Jaycee Drugs reported in JT 1991(1) SC 524** wherein the Supreme Court has already considered the aspect of payment of court fees on an application made under s. 31(1)(aa). It has been held by the apex court that the application being not a 'suit' it does not attract provisions of Article.7 of Schedule-I of the Court Fees and thus no court fees is payable thereon. It has been further held that the application under s.31(1)(aa) of the State Financial Corporation Act, 1951 is in a nature of an execution of decree and thus no court fees is payable though claim is capable of computation in

terms of money. In view thereof I reject the a first submission advanced by the learned counsel for the respondents. In so far as the second submission is concerned the same is also required to be rejected in view of my own judgment delivered in **Miscellaneous Petition No.56 to 2000 to Miscellaneous Petition No. 61 of 2004 in the case of SICOM Ltd vs. Shri Prabhudayal B. Chamaria decided on 25.4.2005** I have held that the amended provisions of s.22 are not applicable to the guarantors in respect of application under s.31(1)(aa). I have further held that the protection given by the amendment to the guarantors is restricted only to the suit and not application under s. 31(1)(aa). I thus for similar reasons set out in my judgment in the aforesaid case reject the same in the present case.

6. In view thereof I pass the following order.

. The respondents are directed to make payment of Rs.4,95,00,000/- with interest at the rate of

12% p.s.t ill the date of payment and or realisation.

sd/-

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